

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Ogden Union Railway and Depot Company and/or its Officers violated the terms of the existing Agreement.

- (a) By removing the work of Car Selector J. G. Burton from the scope of the clerical schedule beginning Sunday, December 1, 1946 and assigning this work to the mechanical craft; and
- (b) This work shall be returned to the clerical craft on each and every Sunday and Mr. J. G. Burton shall be compensated for a day's pay at the rate of time and one-half for each Sunday beginning with December 1, 1946. Such claims to continue to accrue to the claimant until the claim of the Brotherhood is satisfied.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. G. Burton, with clerical seniority date of February 27, 1903 and position and rank No. 2 on the clerical seniority roster, is the regularly assigned incumbent of position of Car Selector, which position is under the supervision of the Freight Agent at Ogden, Utah, Ogden Union Railway and Depot Company and under the jurisdiction of—and subject to the terms of the agreement between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the aforementioned Company.

The nature of the work performed by this Car Selector, Mr. Burton, was to take the orders for empty cars to be loaded by the mills and industries, go into the freight yard and located suitable equipment, tag it to the respective industry after which Mr. Burton would prepare the necessary reports and issue switching or placing instructions to the Order Clerk at the Yard Office for proper placement or movement.

Historically, the position of Car Selector has been clerical as far back as the memory of present employees can take us, and likewise, the position has been worked—and filled by clerical employees for eight hours of every day of the week, including Sundays.

Mr. J. G. Burton took the position in the latter part of 1942 and worked seven days per week which included a full eight hour shift on Sundays until the close of the year 1945. Beginning in January, 1946, a relief employee was assigned to relieve Mr. Burton on Sunday thereby reducing Mr. Burton's assignment to a six-day weekly basis, yet this relief employee (Mr. V. Linder-

all cars spotted for loading or unloading, cars in process of loading and unloading, and cars released by industries. This latter check and record is required to conform with demurrage regulations of the I. C. C. Clerical forces classified as interchange clerks make record currently of cars interchanged from one road to another. Other miscellaneous records are maintained by clerical forces of cars, their contents, destination, etc., in accordance with the carrier's requirements.

Some form of writing or maintenance of records is required of nearly every employe in the service of the carrier from the janitor and section laborer up to and including the executive officers. The section foreman keeps record of the time work by each employe, the man hours worked on each different I. C. C. accounting classification of work. He keeps daily record of his time roll and pay roll, makes written reports in connection with his work, makes written answers to inquiries, and in many other respects makes written records or reports incident to his particular work. This is more or less true of every other employe. The engineer on the switch engine, the foreman in charge of the switch crew, the engine herder, the switchtender, the carpenter, painter, electrician, the car foreman and the car inspector all make written reports and records of one kind or another as an integral part of their particular work. Such work is not, the carrier submits, in violation of the scope rule of agreement covering the clerical craft.

In the instant case, the application of the card showing the name of the industry to cars is an integral part of the work of car inspectors. The application of the cards by car inspectors is not in violation of any provision of agreement covering the clerical craft.

In summary, the carrier submits that the claim should be denied for the following reasons:

1. The terms of existing agreement between the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees and the Ogden Union Railway and Depot Company have not been violated.

2. The work forming basis of this claim does not come within the scope of that agreement, but, instead, is an integral part of the work of a car inspector and is properly performed by him.

3. The penalty claim of 8 hours at rate of time and one-half, or 12 hours' pay, is not provided for in any provision of agreement covering the clerical craft.

4. The claim is totally without merit.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 1, 1946, Claimant J. G. Burton, employed by Carrier as a car selector and holding seniority rights on the Clerks' roster, worked his position six days per week, Monday through Saturday, and 5½ hours on Sundays. He worked together with car inspector L. C. Call of the mechanical craft in connection with the filling of car orders for various flour mills in the vicinity of Ogden. On December 1, 1946, the Sunday work of his position was discontinued and he worked but six days each week until March 8, 1948, when the position of car selector was abolished. Employes claim that his clerical work on Sundays was removed from the clerical craft and given to the mechanical craft in violation of their Agreement.

The record is long, involved and replete with irrelevancies and generalities. However, in attempting to determine what work the Employes claim was removed from Burton's position and given to Call we believe that the answer is to be found in letter of the General Chairman to Carrier Vice President, dated June 16, 1947, in which he states that when the car selector position was placed on six-day assignment Carrier's instructions provided in case it

was necessary for mills or other industries to place emergency orders on Sunday, information covering such orders should be promptly furnished mechanical car selector and that this instruction confirmed his statements that clerical work was being transferred to the mechanical forces. In the same letter he cited the fact that Mr. Call selected and tagged all necessary cars into the mills and industries and said that he did not consider it proper to permit these people to route cars or tag them into the mills. These items of work, therefore, we consider as those involved in this dispute and devote ourselves to a determination as to whether or not their performance by Call on Sundays constituted a violation of the Clerks' Agreement.

The record shows that the Carrier acknowledges that Call took car orders from mill foremen on Sundays from December 1, 1946 to March 10, 1947, and recorded same on Form 4615 of the Carrier. Carrier asserts, however, that this was done voluntarily by Call and in violation of instructions. Said instructions required that car orders from the mills be handled by clerical forces on and after December 1, 1946. Carrier's position in this respect is somewhat inconsistent in that they argue later on in their submission that taking orders for cars as was done by Call in this case, is not work coming within the scope of the clerical Agreement, pointing out that car orders are taken by agents, assistant agents, superintendents, assistant superintendents and other classes of employees. In any event, it is clear that the preparation of Form 4615 by Call was violative of the Clerks' schedule and it appears to us that the Carrier by its action and instructions considered the handling of car orders as performed by Call was also in violation of the schedule.

This then brings us to a consideration of the question of whether "tagging the car into industries" as performed by Call was a violation of the schedule. In this connection Carrier argues that such work is properly the work of car inspectors and has been recognized as such and performed by all of the commodity car inspectors employed by the Carrier at Ogden for many years with the exception of the one car inspector who, prior to the date of this claim, was accompanied by the claimant, J. G. Burton; in that particular case Burton applied the card as a matter of convenience but not as a requirement of the Agreement provisions. Carrier further submits that the car inspector has not completed his work until he has applied the card showing the industry for which the car is selected and reported its number and location to the yard office forces who then take over the responsibility of moving the car to the industry. We are impressed with this argument, particularly so when viewing the type of card referred to for it is merely a card three inches by four inches with the mill name imprinted thereupon, requiring initialing, number and date. The work of affixing said tag could not take more than a second or two. It further appears from the record that after the position of car selector was abolished in March of 1948 car inspectors have continued since that time to perform the same work which they did prior thereto. Since Employees admit that this claim obviously terminates as of March 7, 1948, there seems to be an admission that this type of tagging is not covered by their schedule.

From what we have said above it is apparent that an affirmative award is required for the period from December 1, 1946 to March 10, 1947 and since it appears that Burton was employed for approximately 5½ hours each Sunday prior to that time, we hold that he should be compensated for that number of hours at the time and one-half rate for each Sunday during the aforesaid period. Accordingly the claim of the Employees is sustained to that extent and denied as to any claims after March 10, 1947.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board had jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as indicated in Opinion.

AWARD

Claim (a) sustained for period December 1, 1946 to March 10, 1947.
Claim (b) sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.